

APPLICANTS:
Darren & Tiffany Wendland

REQUEST: A variance to permit an existing shed within the limited area of disturbance in the R4/PRD District

HEARING DATE: October 24, 2012

BEFORE THE
ZONING HEARING EXAMINER
FOR
HARFORD COUNTY
Case No. 5786

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Darren & Tiffany Wendland

LOCATION: 4311 Marigold Lane, Belcamp
Tax Map: 62 / Grid: 1E / Parcel: 807 / Lot: 96
Third (3rd) Election District

ZONING: R4 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-63M of the Harford County Code, to permit an existing shed within the limited area of disturbance as required by the amendments to the Critical Area management area boundaries in the R4/Urban Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is approximately one-quarter acre in size, improved by a two-story dwelling with a two-car garage, and has been owned by the Applicants since 2006.

Similar to other homes in the community, the house is also improved by a rear deck and a 10 foot by 12 foot shed which has been on the property for approximately 10 years, predating the Applicants' purchase of the property.

The parcel is, unfortunately for the Applicants, also encumbered by a "Limited Area of Disturbance" which takes up most of the Applicants' rear yard. The shed is located within the Limited Area of Disturbance and must be moved unless the requested variance is granted.

In support of their application, the Applicants suggest that the rear yard features such a slope from front to rear that the shed cannot be easily, if at all, moved. The Applicants have contacted a number of contractors, all of whom have declined to move the shed due to the slope of the rear yard. The Applicants further suggest that leaving the shed in its current location will not adversely affect the environment. The shed is located on a gravel base and there has been no adverse impact over the last 10 years.

Case No. 5786 – Darren & Tiffany Wendland

None of the Applicants' neighbors object to the shed's location. The Applicants further suggest that attempting to move the shed would result in a greater impact to the area than leaving it at its existing location.

The Harford County Department of Planning and Zoning Staff Report states:

"The Departments finds that the subject property is unique. The limited Area of Disturbance is unique to the Riverside community and was a result of a Growth Allocation. The rear yard of the subject property is almost entirely encumbered by the Limited Area of Disturbance. In addition, the topography of the property is moderate to steeply sloping from the back of the house to the rear property line. This prohibits the Applicants from the reasonable use and enjoyment of their rear yard. The shed was located in the only relatively flat portion of the rear yard."

The Department, accordingly, recommends approval.

No testimony or evidence was presented in opposition.

APPLICABLE LAW:

Section 267-63H of the Harford County Code provides:

- "(1) Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship [See Subsection H(5) below] to an applicant.*
- (2) All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.*
- (3) An application for a variance to legalize a violation of this section, including any unpermitted structure or development activity, may not be accepted unless the Department of Planning and Zoning first issues a notice of violation for the violation, per Subsection P.*
- (4) In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:*

Case No. 5786 – Darren & Tiffany Wendland

- (a) *That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.*
 - (b) *That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.*
 - (c) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.*
 - (d) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*
 - (e) *That the granting of a variance will not adversely affect water quality or a diversely impact fish, wildlife or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the spirit and intent of this section.*
 - (f) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*
 - (g) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- (5) *For purposes of this subsection, "unwarranted hardship" means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested. In considering whether unwarranted hardship exists, the County must consider the following:*

Case No. 5786 – Darren & Tiffany Wendland

- (a) *The County shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.*
- (b) *If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the County shall consider that fact.*
- (c) *An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection H(5)(a) above.*
- (d) *Based on competent and substantial evidence, the County shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above.*
- (e) *With due regard for the person's experience, technical competence and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:*
 - [1] *The applicant;*
 - [2] *The County or any other government agency; or*
 - [3] *Any other person deemed appropriate by the County."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants' property is encumbered to virtually the entire extent of its rear yard by an Area of Limited Disturbance. This means, of course, that the Applicants cannot maintain any improvement in their rear yard, including the shed which has been located there for approximately 10 years. It is not practical to move the shed due to both the limited, unencumbered area and the steep slope of the rear yard of the parcel. It is, simply put, better to maintain the shed at its present location than to attempt any movement of it. The elimination of their right to maintain this very modestly sized shed would certainly cause the Applicants a hardship.

Case No. 5786 – Darren & Tiffany Wendland

The Applicants have shown that they are entitled to a variance to allow the shed to remain in its present location by complying with the following requirements of Section 267-63H, as follows:

- (1) *Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship [See Subsection H(5) below] to an applicant.*

The hardship was found, as set forth below.

- (2) *All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.*

This section has been complied with.

- (3) *An application for a variance to legalize a violation of this section, including any unpermitted structure or development activity, may not be accepted unless the Department of Planning and Zoning first issues a notice of violation for the violation, per Subsection P.*
- (4) *In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:*
 - (a) *That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.*

The subject parcel is encumbered almost entirely by an Area of Limited Disturbance. The parcel is intended and is used for residential purposes. The Applicants cannot maintain a use consistent with the uses enjoyed by their neighbors without the requested variance.

- (b) *That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.*

Case No. 5786 – Darren & Tiffany Wendland

Other similarly situated residents in Harford County are able to use their rear yards without similar restrictions.

- (c) *That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.*

The Applicants will not receive any special advantage or privilege by being granted the requested variance.

- (d) *That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.*

The shed was not erected by the Applicants and the request is not a result of their own actions.

- (e) *That the granting of a variance will not adversely affect water quality or a diversely impact fish, wildlife or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the spirit and intent of this section.*

No finding of adverse impact is made.

- (f) *That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.*

The granting of this variance will not affect the adjoining open space.

- (g) *That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

This section is not applicable.

Case No. 5786 – Darren & Tiffany Wendland

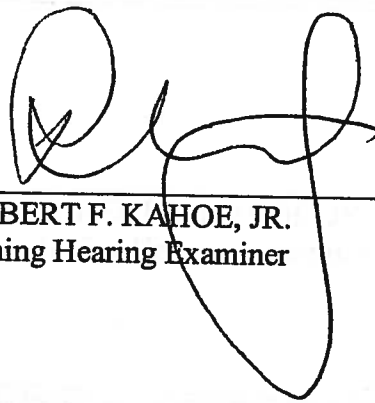
It is found, accordingly, that the variance is not based upon circumstances which are the result of the actions of the Applicants and the Applicants have met their burden of proof and burden of persuasion to overcome the presumption of non-conformance. The continued existence of a relatively small storage shed, similar to many others in Harford County, is not inconsistent with the general purpose and intent of the limited area of disturbance of the Natural Resources article.

CONCLUSION:

Accordingly, it is recommended that the requested variance to allow the shed to remain in a limited area of disturbance be granted, subject to the following conditions:

1. The Applicants shall obtain all necessary permits for the shed and inspections, if applicable.
2. A mitigation plan shall be submitted to the Department of Planning and Zoning for review and approval.
3. A copy of this decision will be sent to the State of Maryland Critical Areas Commission.

Date: November 16, 2012



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on December 18, 2012.